

Summonses and Production of Documents

1.0 This Practice Direction:

- explains how to request a summons
- identifies the factors the Tribunal reviews when deciding to issue a summons
- does not apply to applications to determine the right to sue; please refer to *Practice Direction: Right to Sue Applications*.

2.0 The Legislation

2.1 A summons is a document that requires a person to attend at a hearing to give evidence on a certain date. The summons takes effect when it is served on the witness.

2.2 The summons will say the time and place at which the witness is required to attend. The summons requires a witness to re-attend until their testimony is no longer required by the Vice-Chair or Panel.

2.3 Section 132(1) of the *Workplace Safety and Insurance Act* gives the Tribunal the power to summon and enforce the attendance of witnesses at a hearing in the same manner as a court.

3.0 The Request

3.1 A party to an appeal may request a summons.

3.2 A summons request should be made in writing at least three weeks prior to the hearing. (See also *Practice Direction: Disclosure, Witnesses and the Three-Week Rule*.)

3.3 The party requesting the summons must provide

- the name, current address and telephone number of the witness
- a brief statement outlining why the testimony is necessary for the appeal
- a brief statement indicating whether the witness is willing to attend.

3.4 The party requesting the summons must provide address information for the witness that is specific enough to allow the Tribunal to locate the person to serve the summons. The Tribunal will notify the requestor if the address information is not sufficient. The Tribunal will make no efforts to locate the witness where the information provided is not sufficient (unless directed to do so by a Vice-Chair or Panel).

4.0 Reviewing the Request

4.1 The Tribunal will review all summons requests to determine whether it will issue a summons. All requests are reviewed based on the facts of the particular case. When reviewing a request, the Tribunal will consider the following factors:

- whether the evidence is relevant to the issues in dispute
- whether the evidence is likely to be significant to a determination of the issue in dispute
- whether the evidence is readily obtainable from other sources
- whether the proposed witness can be compelled by law to give evidence in the proceedings
- whether a summons is required to compel attendance; and
- whether the witness requires the summons to get time off work.

4.2 If the Tribunal agrees to issue the summons, the Tribunal will prepare and serve the summons. The Tribunal will obtain an original affidavit of service from the process server.

4.3 If the Tribunal declines to issue the summons, the party may raise the request at the hearing.

5.0 Documents

5.1 When documents are in the control of one of the parties, the parties are required to explore the release and exchange of documents.

5.2 A request for a summons for the production of documents is usually referred to a Vice-Chair or Panel for instructions.

6.0 Enforcement

6.1 If the Tribunal is not able to serve a summons, the Vice-Chair or Panel assigned to the appeal may proceed to hear the case and then decide whether the prospective witness' testimony is necessary.

6.2 If the witness was served with a summons and does not attend the hearing, the Vice-Chair or Panel may

- proceed without the evidence or the witness if it is determined that it is not essential
- proceed with the hearing and at the conclusion of the hearing determine whether the evidence or witness is essential
- consider whether to take steps against the person who failed to attend in accordance with the summons

7.0 Conduct Money

7.1 The Tribunal will pay conduct money to the witness in accordance with Tariff A of the *Rules of Civil Procedure*. The conduct money will be provided with the summons.

7.2 For Information about other fees, please refer to *Practice Direction: Fees and Expenses*.

Dated at Toronto, Ontario this first day of October, 2007
Workplace Safety and Insurance Appeals Tribunal
I.J. Strachan, Tribunal Chair